

# -EXHIBIT 6-

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ABANTE ROOTER AND PLUMBING, INC.;  
MARK HANKINS, and PHILIP J.  
CHARVAT, individually and on  
behalf of all others similarly  
situated,

Plaintiffs,

vs.

Case No.:  
4:15-cv-06314-YGR

ALARM.COM INCORPORATED and  
ALARM.COM HOLDINGS, INC.,

Defendants.

\_\_\_\_\_/

DEPOSITION OF RANDALL A. SNYDER

Friday, March 2, 2018

Las Vegas, Nevada

Reported by:  
Michelle C. Johnson, RPR-CRR  
NV CCR 771, CA CSR 5962

Job No. 2822905

1 one, you are opining that the Ytel device at issue  
2 here is an ATDS?

3 A. Yes.

4 Q. Number two, you are opining that 119,484  
5 calls were made to 22,055 unique cellular telephone  
6 numbers?

7 A. Yes. And that opinion is based on another  
8 expert witness; I did not perform that analysis  
9 myself. But understanding how the analysis was done  
10 and the way it was performed, I concur with the  
11 results of the methodology of that analysis.

12 Q. Let's take these opinions one by one. Let's  
13 start with the ATDS opinion. What are the bases, the  
14 foundations, for your opinions?

15 A. Well, the first major one is that the Ytel  
16 Cloud Contact Center is sold, marketed, and maintains  
17 itself that it is a predictive dialer by definition.

18 The services agreement between Alarm.com and  
19 Ytel maintains that Ytel is providing a predictive  
20 dialer and predictive dialing functionality. That's  
21 the first big, main one.

22 The rest was analysis on how that operates,  
23 which is uploading lists of numbers into the dialing  
24 machine. And it has the ability to predictively dial  
25 those numbers.

1 Q. Where did you form your opinion that the  
2 services agreement is between Ytel and Alarm.com?

3 A. Well, I don't have the exhibit in front of  
4 me, so I may have misspoke. But I do have -- I think  
5 it was Exhibit C. And if you want to show me that, if  
6 you have it -- that showed a Master Services Agreement  
7 from -- for the Ytel system and what functionality it  
8 was providing.

9 Q. Yeah, I'll show that to you later. It's  
10 actually not with Alarm.com, though.

11 A. Okay.

12 Q. That wouldn't surprise you?

13 A. No. The -- I use that as evidence of -- let  
14 me put it this way: My analysis of the Ytel Cloud  
15 Contact Center and the results of that analysis and my  
16 conclusions and opinions would be the same regardless  
17 of who the defendant was in this case. That even  
18 objectively analyzing this system that's provided to  
19 hundreds of thousands of its customers has -- actually  
20 predictively dials calls and does other forms of  
21 automatic dialing, and therefore would qualify as an  
22 ATDS, regardless of who the defendant was.

23 Q. So at this point, you just don't know who the  
24 Ytel agreement was signed with?

25 MR. PARONICH: Objection.



1 Q. Is the method you utilized in reaching your  
2 opinion reliable?

3 A. I believe so.

4 Q. Why?

5 A. I don't know of another way to do it with  
6 30-some years of engineering experience in  
7 telecommunications and call processing systems.

8 Q. So the method utilized in this case was to  
9 review the documents in paragraph 8?

10 A. Analyzed the system that was in use at the  
11 time the calls were made.

12 Q. Well, you didn't analyze the system.

13 A. Sure, I did.

14 Q. How did you analyze the system?

15 A. By reading about all of its capabilities from  
16 the manufacturer, getting evidence from fact witnesses  
17 that used the machine and device.

18 Q. Okay. So you reviewed the documents in  
19 paragraph 8 of your report?

20 A. Yes.

21 Q. But as we discussed, you didn't actually use  
22 the system yourself?

23 A. That's right. And that would be a worthless  
24 endeavor.

25 MR. JASZCZUK: This is a good stopping point.

1 certainly not sure.

2 Q. And what would have been the total length of  
3 those conversations?

4 A. Not long. It was more to make sure my  
5 understanding of her methodology was correct. We've  
6 worked together quite a bit, so I generally understand  
7 the steps she takes in her analysis. And then maybe I  
8 have some questions about some things just for my own  
9 education sometimes. And sometimes those calls have a  
10 personal component. Certainly, when we talk as  
11 co-experts in a case, part is professional, part is  
12 personal. I don't charge for that time.

13 Q. So could you tell me how long you, in total,  
14 approximately, spent talking to Anya Verkhovskaya on  
15 matters related to this case, not personal?

16 A. I really don't know.

17 Q. Does 15 minutes sound about right?

18 A. Probably more than that. But again, I'm  
19 reluctant to --

20 Q. Again, I'm trying to figure out could it be  
21 ten hours or likely less than half an hour?

22 A. No, it was on the smaller side of that.

23 Q. Likely less than half an hour?

24 A. Yeah, likely less than an hour, certainly.

25 Could have been half an hour, could have been 20

1 minutes; I just don't recall.

2 Q. Okay, now I have questions for you -- I'm  
3 sorry, one more question.

4 How much time did you spend drafting your  
5 report?

6 A. I guess that's on my -- I think we provided  
7 you with -- I have one invoice that I have not sent to  
8 Terrell Marshall yet because my -- the total amount of  
9 time spent came within the initial retainer. So I  
10 haven't sent them an invoice. But I sent to them what  
11 I had a balance on it, so I might be four or five  
12 hours, something like that, total.

13 It is difficult for me to separate out, as  
14 we've been doing, specific tasks, because a lot of  
15 times, I do them combined. I'm drafting a report and  
16 reading and studying and writing and reading and  
17 analyzing and studying and writing intermixed and  
18 intermingled, then there will be a phone call in there  
19 or something like that. So that's just my process. I  
20 don't read everything in a chunk of time, record that  
21 time, and write everything in a chunk of time, record  
22 that time. It's very -- for me, it's very mixed  
23 together.

24 Q. What about the time you spent assembling the  
25 exhibits to your report; how long would that have



1           The other clause, which is --

2           Q. Can you just clarify which two clauses?

3           A. Yes. "From a list of numbers" and "to dial  
4 such numbers without human intervention." The first  
5 clause, "to store or produce numbers to be called  
6 using a random or sequential number generator," my  
7 understanding is that that is, in the industry,  
8 litigation industry in the TCPA, is almost always  
9 under dispute what that means.

10           I have my personal feelings and there are  
11 some additional FCC regulations that clarify that  
12 statement, but I'm not relying on that statement for  
13 my conclusions and opinions.

14           Q. Understood. And Mr. Snyder, we've gone  
15 through this several times, so I understand your  
16 testimony. It's really a matter of, for the record,  
17 making sure that everybody else does too. So let me  
18 try to summarize that, then.

19           Am I correct in saying that you contend that  
20 the Ytel system that was used in the case at issue  
21 here satisfies the second clause of paragraph 10,  
22 which is, quote, dials from a list or database of  
23 numbers, and that it also satisfies the third clause  
24 in paragraph 10, which states, quote, and to dial such  
25 numbers without human intervention. Correct?



1 A. Correct.

2 Q. And do you contend that the Ytel system at  
3 issue in this case satisfies the first clause in  
4 paragraph 10, which is, quote, has the capacity to  
5 store or produce telephone numbers to be called, using  
6 a random or sequential number generator, end quote?

7 A. Generally, yes.

8 Q. I have to go into the "generally" now. We  
9 have to unpack that.

10 A. Yes.

11 Q. Tell me why you said "generally."

12 A. Because the clause says -- and I'm just using  
13 plain and ordinary English, not the law or not my  
14 interpretation of the law. But it says "store or  
15 produce telephone numbers to be called." I would  
16 contend that the Ytel Cloud Contact Center stores  
17 telephone numbers to be called, so as a portion of  
18 that clause, I believe that is true.

19 I understand there is some dispute on that  
20 issue, but my understanding of the FCC regulations  
21 clearly states that the operative meaning of that  
22 clause is to store or produce, without the second  
23 part, "using a random or sequential number generator."  
24 You cannot store numbers using a random number  
25 generator, for instance.

1 saying. What you're referring to is that the language  
2 isn't a model of clarity, necessarily. So what I'm  
3 trying to figure out is, assuming that a court decides  
4 that here is what it actually means, even though you  
5 and I might think it's logical or illogical, whatever  
6 that may be, that's what I'm trying to get on the  
7 record.

8 A. That's correct. And that's why I say  
9 informal and from plain and ordinary English and from  
10 my engineering background, this is -- the courts have  
11 been in dispute about this clause for as long as the  
12 TCPA has existed.

13 Q. Okay. With all of that in mind, then, and  
14 it's on the record, let me try to get that final  
15 answer on it.

16 So you are not contending that the Ytel  
17 system has the present or potential capacity to store  
18 phone numbers to be called, using a random or  
19 sequential number generator?

20 A. Correct.

21 Q. And you are not contending that the Ytel  
22 system has the present or potential capacity to  
23 produce phone numbers to be called, using a random or  
24 sequential number generator?

25 A. Correct.

1 any legal opinions in this case.

2 Q. Okay. And if we take the word "legal" out,  
3 you are making no formal opinion as to whether  
4 Nationwide used the Ytel system throughout the time  
5 period in question here?

6 A. No, I was not asked to opine on that. I was  
7 simply asked to opine on the characteristics of the  
8 Ytel equipment that is alleged to be in use -- I  
9 assume alleged, or there would be no case here --  
10 alleged to be in use at the time these calls were  
11 made.

12 Q. Understood. So in fairness to you, so we  
13 know what your opinion is, you are assuming that it  
14 was the Ytel system that was used by Nationwide to  
15 make the calls at issue in this case?

16 A. Yes. However, my opinion would not change  
17 that the Ytel dialer is in fact an ATDS regardless of  
18 Nationwide or its usage or the time frame involved.  
19 Just objectively, this system would still qualify as  
20 an ATDS, in my opinion.

21 Q. Understood. But for all that you know, if  
22 Nationwide used the Johnson 3000, not made by Ytel,  
23 your opinion would not be that the system that  
24 Nationwide used qualifies as an ATDS because your  
25 assumption is that Nationwide used the Ytel system?



1           A. Yeah. And that's basically information from  
2 the attorneys and other documentation. Again, I don't  
3 state that opinion one way or the other that -- I do  
4 state the opinion that Nationwide used this, the  
5 defendants used this system, but that's an assumption  
6 provided by the attorneys and other evidence.

7           Q. Okay, then I understand. So I think these  
8 questions will go really quick, then.

9                   Do you know when Nationwide began using the  
10 Ytel system?

11          A. I don't recall. I think it's in one of the  
12 pieces of evidence. I don't recall. I do recall, I  
13 think, the class period for this is just over a year  
14 or something like that, or 14 months or 15 months or  
15 something. But I don't recall the start dates and end  
16 dates.

17          Q. My next question was going to be whether you  
18 recall the end date.

19                   Do you know which version of the Ytel system  
20 Nationwide was using during the various time frames at  
21 issue in this case?

22          A. No.

23          Q. Did you speak with anyone at Nationwide to  
24 determine which version of the system was used?

25          A. No. And that would probably be inappropriate



1 of me.

2 Q. Did you speak with anyone at Ytel to  
3 determine which version of the system was allegedly  
4 used by Nationwide?

5 A. No.

6 Q. As of what date did you analyze the Ytel  
7 system? Do you know what I mean by that?

8 A. Yes.

9 Over the course that I performed the analysis  
10 in this case, probably the dates are in the  
11 nonsubmitted invoice I have, which I have a balance on  
12 it, of when I was retained to when I drafted the final  
13 report, or when the final report was finished. So  
14 that would be the time frame.

15 In some cases -- I don't recall if I did it  
16 in this case. In some cases, I use the Internet  
17 Archive, the web archive Wayback Machine, to see if I  
18 can find public information at the time, on the  
19 website of the manufacturer, to see if there was some  
20 fundamental change in the functionality of the system.

21 I don't recall if I did that in this case or  
22 not. I know I looked at the website, but I don't know  
23 if I looked at the Internet archive of that website.  
24 But I am sure that over the last several years, Ytel,  
25 the Ytel cloud contact dialing system was a predictive

1 people that received calls. It's typically you start  
2 with calls were initiated or made. And the FCC has  
3 plenty of regulations on that that I understand.

4 With that said, in many cases when you are  
5 automatically dialing calls en masse, oftentimes you  
6 get busy signals; you get fast busy signals, meaning  
7 there is congestion in the network and the call  
8 doesn't go through; you get no answer. Maybe if  
9 there's voicemail, you get no answer and the call is  
10 forwarded to voicemail, that might be considered a  
11 completed call, but if there is no answer, that might  
12 be considered a not completed call; you might get a  
13 special information tone, the number you have reached  
14 is not in service, et cetera.

15 So my understanding, from a technological  
16 standpoint or what I would say in the telecom field,  
17 is a completed call that's answered in some form,  
18 either by an automated voicemail system or an  
19 answering machine or a human. Calls that are not  
20 answered for a variety of reasons would be calls that  
21 were not completed.

22 And typically, that's also what defines  
23 billable events from your carrier's perspective. So  
24 for instance, if I'm on my cell phone and I make a  
25 call and I get a busy signal, that doesn't show up as

1 a billable call with minutes used on my cell phone  
2 bill. Only completed calls count. And I think those  
3 are old regulations, actually old telephony  
4 regulations that go back many years.

5 So my understanding are completed calls -- or  
6 not completed calls are calls that were initiated by  
7 the system, but perhaps were not answered in some  
8 form.

9 Q. Do you then have an opinion whether, under  
10 the TCPA, certain of the categories of the calls that  
11 you just mentioned should or should not be included in  
12 a list such as the one that Ms. Verkhovskaya sent you?

13 MR. PARONICH: Objection.

14 But go ahead.

15 THE WITNESS: I don't. All I know is that my  
16 understanding is that the TCPA talks about calls made  
17 and initiated; it doesn't talk about calls answered.

18 And from an informal, personal standpoint, I  
19 would tend to be conservative when counting these  
20 numbers to make sure that I excluded anything that  
21 might be questionable. That's personally what I do,  
22 and I think that's what Anya did in this case.

23 BY MR. JASZCZUK:

24 Q. So from your standpoint, would you include,  
25 for instance, the category you mentioned, which are